

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6225**

OFFERED BY _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Improving SCRA and
3 USERRA Protections Act of 2008”.

4 SEC. 2. EQUITY POWERS.

5 Section 4323(c) of title 38, United States Code, is
6 amended by striking “may use” and inserting “shall use,
7 in any case in which the court determines it is appro-
8 priate,”.

**9 SEC. 3. RELIEF FOR STUDENTS WHO ARE MEMBERS OF
10 ARMED FORCES DURING PERIOD OF MILI-
11 TARY SERVICE.**

12 (a) IN GENERAL.—Title VII of the Servicemembers
13 Civil Relief Act (50 U.S.C. App. 591 et seq.) is amended
14 by adding at the end the following new section:

1 **“SEC. 707. TUITION, REENROLLMENT, AND STUDENT LOAN**
2 **RELIEF FOR POSTSECONDARY STUDENTS**
3 **CALLED TO MILITARY SERVICE.**

4 “(a) TUITION AND REENROLLMENT.—Whenever a
5 servicemember is called, activated, or ordered to military
6 service and withdraws or takes a leave of absence from
7 an institution of higher education in which the
8 servicemember is enrolled, the institution shall—

9 “(1) provide a credit or refund to the
10 servicemember the tuition and fees paid by the
11 servicemember (other than from the proceeds of a
12 grant or scholarship) for the portion of the program
13 of education for which the servicemember did not re-
14 ceive academic credit after such withdrawal or leave;
15 and

16 “(2) provide the servicemember an opportunity
17 to reenroll with the same educational and academic
18 status in such program of education that the
19 servicemember had when activated for military serv-
20 ice.

21 “(b) INSTITUTION OF HIGHER EDUCATION DE-
22 FINED.—In this section, the term ‘institution of higher
23 education’ means a 2-year or 4-year institution of higher
24 education as defined in section 102 of the Higher Edu-
25 cation Act of 1965 (20 U.S.C. 1002).”.

1 (b) EXEMPTION OF STUDENT DEBTS FROM CRED-
2 ITOR PROTECTION BASED ON INCOME LEVEL.—Section
3 207(c) of such Act (50 U.S.C. App. 527(c)) is amended
4 by adding at the end the following new sentence: “This
5 subsection shall not apply with respect to an obligation
6 or liability that is incurred by a servicemember who, at
7 the time the servicemember is called to military service,
8 is a student enrolled within six months of activation at
9 an institution of higher education on a full-time basis, as
10 determined by that institution.”

11 (c) CLERICAL AMENDMENT.—The table of contents
12 in section (1)(b) of such Act is amended by adding at the
13 end the following new item:

“Sec. 707. Tuition, reenrollment, and student loan relief for postsecondary stu-
dents called to military service.”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect for periods of military service
16 beginning after the date of the enactment of this section.

17 **SEC. 4. TERMINATION OR SUSPENSION BY**
18 **SERVICEMEMBERS OF CERTAIN SERVICE**
19 **CONTRACTS ENTERED INTO BEFORE PERMA-**
20 **NENT CHANGE OF STATION OR DEPLOYMENT**
21 **ORDERS.**

22 (a) TERMINATION.—Title III of the Servicemembers
23 Civil Relief Act (50 U.S.C. App. 531 et seq.) is amended—

1 (1) by redesignating section 308 as section 309;
2 and

3 (2) by inserting after section 307 the following:

4 **“SEC. 308. TERMINATION OR SUSPENSION OF SERVICE**
5 **CONTRACTS.**

6 “(a) TERMINATION OR SUSPENSION BY
7 SERVICEMEMBER.—A person in military service who is
8 party to or enters into a contract described in subsection
9 (c) may terminate or suspend, at the person’s option, the
10 contract at any time after the date of the person’s military
11 orders, as described in subsection (c).

12 “(b) SPECIAL RULES.—(1) A suspension under sub-
13 section (a) of a contract by a person in military service
14 shall continue for the length of the person’s deployment
15 pursuant to the person’s military orders.

16 “(2) A service provider under a contract suspended
17 or terminated under subsection (a) by a person in military
18 service may not impose a suspension fee or early termi-
19 nation fee in connection with the suspension or termi-
20 nation of the contract, other than a nominal fee for the
21 suspension; except that the service provider may impose
22 a reasonable fee for any equipment remaining on the
23 premises of the person in military service during the pe-
24 riod of the suspension. The person in military service may
25 defer, without penalty, payment of such a nominal fee or

1 reasonable fee for the length of the person's deployment
2 pursuant to the person's military orders.

3 “(3) In any case in which the contract being sus-
4 pended under subsection (a) is for cellular telephone serv-
5 ice or telephone exchange service, the person in military
6 service, after the date on which the suspension of the con-
7 tract ends, may keep, to the extent practicable and in ac-
8 cordance with all applicable laws and regulations, the
9 same telephone number the person had before the person
10 suspended the contract.

11 “(c) COVERED CONTRACTS.—This section applies to
12 a contract for cellular telephone service, telephone ex-
13 change service, multichannel video programming service,
14 Internet access service, water, electricity, oil, gas, or other
15 utility if the person enters into the contract and thereafter
16 receives military orders—

17 “(1) to deploy with a military unit, or as an in-
18 dividual, in support of a contingency operation for a
19 period of not less than 90 days; or

20 “(2) for a change of permanent station to a lo-
21 cation that does not support the contract.

22 “(d) MANNER OF TERMINATION OR SUSPENSION.—

23 “(1) IN GENERAL.—Termination or suspension
24 of a contract under subsection (a) is made by deliv-
25 ery by the person in military service of written no-

1 tice of such termination or suspension and a copy of
2 the servicemember's military orders to the other
3 party to the contract (or to that party's grantee or
4 agent).

5 “(2) NATURE OF NOTICE.—Delivery of notice
6 under paragraph (1) may be accomplished—

7 “(A) by hand delivery;

8 “(B) by private business carrier;

9 “(C) by facsimile; or

10 “(D) by placing the written notice and a
11 copy of the servicemember's military orders in
12 an envelope with sufficient postage and with re-
13 turn receipt requested, and addressed as des-
14 ignated by the party to be notified (or that par-
15 ty's grantee or agent), and depositing the enve-
16 lope in the United States mails.

17 “(e) DATE OF CONTRACT TERMINATION OR SUSPEN-
18 SION.—Termination or suspension of a service contract
19 under subsection (a) is effective as of the date on which
20 the notice under subsection (d) is delivered.

21 “(f) OTHER OBLIGATIONS AND LIABILITIES.—The
22 service provider under the contract may not impose an
23 early termination or suspension charge, but any tax or any
24 other obligation or liability of the person in military serv-
25 ice that, in accordance with the terms of the contract, is

1 due and unpaid or unperformed at the time of termination
2 or suspension of the contract shall be paid or performed
3 by the person in military service.

4 “(g) FEES PAID IN ADVANCE.—A fee or amount paid
5 in advance for a period after the effective date of the ter-
6 mination of the contract shall be refunded to the person
7 in military service by the other party (or that party’s
8 grantee or agent) within 60 days of the effective date of
9 the termination of the contract.

10 “(h) RELIEF TO OTHER PARTY.—Upon application
11 by the other party to the contract to a court before the
12 termination date provided in the written notice, relief
13 granted by this section to a person in military service may
14 be modified as justice and equity require.

15 “(i) PENALTIES.—

16 “(1) MISDEMEANOR.—Whoever knowingly vio-
17 lates or attempts to violate this section shall be fined
18 not more than \$5,000 in the case of an individual
19 or \$10,000 in the case of an organization.

20 “(2) PRESERVATION.—The remedy and rights
21 provided under this section are in addition to and do
22 not preclude any remedy for wrongful conversion
23 otherwise available under law to the person claiming
24 relief under this section, including any award for
25 consequential or punitive damages.

1 “(j) EQUITABLE RELIEF.—

2 “(1) IN GENERAL.—In addition to any other
3 remedy available under law, if a person in military
4 service has reason to believe that another party to
5 a contract has violated or is violating this section,
6 the person in military service may—

7 “(A) bring an action to enjoin the violation
8 in any appropriate United States district court
9 or in any other court of competent jurisdiction;
10 or

11 “(B) bring an action in any appropriate
12 United States district court or in any other
13 court of competent jurisdiction to recover dam-
14 ages equal to three times the amount for which
15 the other party is liable to the person in mili-
16 tary service under this section.

17 “(2) ATTORNEY FEES.—If a person in military
18 service is awarded damages under an action de-
19 scribed under paragraph (1), the person shall be
20 awarded, in addition, the costs of the action and rea-
21 sonable attorney fees, as determined by the court.

22 “(k) DEFINITIONS.—For the purposes of this section,
23 the following definitions apply:

24 “(1) MULTICHANNEL VIDEO PROGRAMMING
25 SERVICE.—The term ‘multichannel video program-

1 ming service’ means video programming service pro-
2 vided by a multichannel video programming dis-
3 tributor, as such term is defined in section 602(13)
4 of the Communications Act of 1934 (47 U.S.C.
5 522(13)).

6 “(2) INTERNET ACCESS SERVICE.—The term
7 ‘Internet access service’ has the meaning given that
8 term under section 231(e)(4) of the Communications
9 Act of 1934 (47 U.S.C. 231(e)(4)).

10 “(3) CELLULAR TELEPHONE SERVICE.—The
11 term ‘cellular telephone service’ means commercial
12 mobile service, as that term is defined in section
13 332(d) of the Communications Act of 1934 (47
14 U.S.C. 332(d)).

15 “(4) TELEPHONE EXCHANGE SERVICE.—The
16 term ‘telephone exchange service’ has the meaning
17 given that term under section 3 of the Communica-
18 tions Act of 1934 (47 U.S.C. 153).”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 in section 1(b) of such Act is amended by striking the
21 item relating to section 308 and inserting the following
22 new items:

 “Sec. 308. Termination or suspension of service contracts.

 “Sec. 309. Extension of protections to dependents.”.

1 **SEC. 5. PENALTIES FOR VIOLATION OF INTEREST RATE**
2 **LIMITATION UNDER SERVICEMEMBERS CIVIL**
3 **RELIEF ACT.**

4 Section 207 of the Servicemembers Civil Relief Act
5 (50 U.S.C. App. 527) is amended by adding at the end
6 the following new subsections:

7 “(e) PENALTY.—Whoever knowingly violates sub-
8 section (a) shall be fined not more than \$5,000 in the case
9 of an individual or \$10,000 in the case of an organization.

10 “(f) RIGHTS OF SERVICEMEMBERS.—

11 “(1) EQUITABLE RELIEF.—

12 “(A) IN GENERAL.—In addition to any
13 other remedies as are provided under Federal
14 or State law, if a servicemember has reason to
15 believe that a creditor has violated or is vio-
16 lating this section, the servicemember may—

17 “(i) bring an action to enjoin such
18 violation in any appropriate United States
19 district court or in any other court of com-
20 petent jurisdiction; and

21 “(ii) bring an action to recover dam-
22 ages equal to three times the amount of
23 the interest charged in violation of this
24 section (plus interest) for which the cred-
25 itor is liable to the servicemember under
26 this section as a result of the violation.

1 “(B) DETERMINATION OF NUMBER OF
2 VIOLATIONS.—In determining the number of
3 violations by a creditor for which a penalty is
4 imposed under subsection (e) or subparagraph
5 (A), the court shall count as a single violation
6 each obligation or liability of a servicemember
7 with respect to which—

8 “(i) the servicemember properly pro-
9 vided to the creditor written notice and a
10 copy of the military orders calling the
11 servicemember to military service and any
12 orders further extending military service
13 under subsection (b); and

14 “(ii) the creditor failed to treat in ac-
15 cordance with subsection (a).

16 “(2) ATTORNEY FEES.—If a servicemember is
17 awarded damages under an action described under
18 paragraph (1), the servicemember shall be awarded,
19 in addition, the costs of the action and reasonable
20 attorney fees, as determined by the court.

21 “(g) PRESERVATION OF OTHER REMEDIES.—The
22 rights and remedies provided under subsections (e) and
23 (f) are in addition to and do not preclude any other rem-
24 edy available under law to a person claiming relief under

1 this section, including any award for consequential or pu-
2 nitive damages.”.

3 **SEC. 6. GUARANTEE OF RESIDENCY FOR SPOUSES OF MILI-**
4 **TARY PERSONNEL.**

5 (a) GUARANTEE OF RESIDENCY.—Section 705 of the
6 Servicemembers Civil Relief Act (50 U.S.C. App. 595) is
7 amended—

8 (1) by striking “For” and inserting “(a) For”;
9 and

10 (2) by adding at the end the following new sub-
11 section:

12 “(b) For the purposes of voting for any Federal office
13 (as defined in section 301 of the Federal Election Cam-
14 paign Act of 1971 (2 U.S.C. 431)) or a State or local
15 office, a person who is absent from a State because the
16 person is accompanying the person’s spouse who is absent
17 from that same State in compliance with military or naval
18 orders shall not, solely by reason of that absence—

19 “(1) be deemed to have lost a residence or
20 domicile in that State, without regard to whether or
21 not the person intends to return to that State;

22 “(2) be deemed to have acquired a residence or
23 domicile in any other State; or

24 “(3) be deemed to have become a resident in or
25 a resident of any other State.”.

1 (b) CLERICAL AMENDMENTS.—

2 (1) The heading for such section is amended to
3 read as follows:

4 **“SEC. 705. GUARANTEE OF RESIDENCY FOR MILITARY PER-**
5 **SONNEL AND SPOUSES OF MILITARY PER-**
6 **SONNEL.”.**

7 (2) The item relating to such section in the
8 table of contents in section 1(b) of such Act is
9 amended to read as follows:

“Sec. 705. Guarantee of residency for military personnel and spouses of mili-
tary personnel.”.

10 **SEC. 7. RESIDENCE FOR TAX PURPOSES.**

11 Section 511(a) of the Servicemembers Civil Relief Act
12 (50 U.S.C. App. 571(a)) is amended—

13 (1) by inserting “(1)” before “A servicemem-
14 ber”; and

15 (2) by adding at the end the following:

16 “(2) A spouse of a servicemember shall neither lose
17 nor acquire a residence or domicile for purposes of tax-
18 ation with respect to the person, personal property, or in-
19 come of the spouse by reason of being absent or present
20 in any tax jurisdiction of the United States solely to be
21 with the servicemember in compliance with the
22 servicemember’s military orders if the residence or domi-
23 cile, as the case may be, is the same for the servicemember
24 and the spouse.”.

Amend the title so as to read: “A bill to amend title 38, United States Code, relating to equitable relief with respect to a State or private employer, and for other purposes.”.

